

OPINION
58-234

October 8, 1958 (OPINION)

PRINTING LAWS

RE: Official Newspaper - Qualifications

This is in reply to your letter of October 4, 1958 in regard to election of official county newspapers.

You inform us that there are two newspapers involved. One, the Billings County Pioneer, has been the official newspaper of Billings County for twenty or more years. The last eight or nine years the paper is claimed to be published in Medora, Billings County, having as its managing editor one Alice L. Lebo of Medora. The paper is mailed from Medora. The actual printing of the paper is in Beach, Golden Valley, North Dakota. The owner of paper is a resident of Beach, North Dakota. This paper received 361 votes at the recent primary election. The other newspaper, The Belfield News, is a paper located at Belfield, Stark County, North Dakota. This paper is printed, published and edited in Stark County and mailed from Belfield, North Dakota. The paper has a wide circulation within Billings County and apparently is about the same as to circulation as the Billings County Pioneer. This paper received 34 votes at the primary and would qualify as to number of votes for placing on the fall election ballots.

Your question is stated as: Whether either one or both, or whether neither of the papers above are qualified to be placed on the ballot for official newspaper within the county of Billings, North Dakota.

You call our attention to subsections 5 and 7 of section 46-0602 of the North Dakota Revised Code of 1943 as follows:

"A newspaper is not qualified to serve as an official newspaper unless:

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5. At least two pages of the newspaper actually is printed at the place designated in the date line thereof;

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7. It is published within the county in which it is a candidate for official newspaper."

We note that the first line of the statute indicates that the statute as a whole specifies qualifications "to serve" as official newspaper. The provision of subsection 5 of the statute would, therefore, in our opinion not be applicable until such time as the newspaper commenced its term "of office". Thus it would be our conclusion that neither newspaper could be kept from running as a candidate for the position of official newspaper on the basis of subsection 5 of the statute.

Subsection 7, however, refers to the county in which the newspaper is a "candidate". It is, therefore, our opinion that this provision must be complied with prior to the time the name of the newspaper is placed on the ballot.

The difficulty with the application of subsection 7 is in determining the legal meaning of the word "published". We have no decision of the supreme court of this state defining the word. The decisions of the supreme courts of other states on similar questions take extremely divergent views of the matter.

Thus we find decisions that place of "printing" is place of "publishing". See: Carter v. Land, 174 Ga. 811; 164 S.E. 205; State v. Board of Commissioners of Big Horn County, 77 Mont. 316, 250 Pac. 606, Johnson v. Langley, 57 S.W.2d. 21, 247 Ky. 387. Other decisions indicate that place of printing and place of publishing are not necessarily the same. See: Wolfe County Liquor Dispensary Association v. Ingram, 272 Ky. 38, 113 S.W.2d. 839; Connerly v. Stephenson, 181 Ark. 833, 28 S.W.2d. 60; Addison v. Town of Amite City, 161 So. 364; State ex rel. Newman v. Pagels, 212 Wis. 475, 250 N.W. 430; Bardwell v. Town of Clinton, La. App. 180 So. 148-150; Vick v. Bishop, 252 Ala. 250, 40 So.2d. 845; Lewis v. Tate, 210 Ark. 594, 197 S.W.2d. 23; Madigan v. City of Onalaska, 256 Wis. 398, 41 N.W.2d. 206.

It is our opinion that the better view is that the place of publication is the place where the newspaper is first distributed to the public. See: Madigan v. City of Onalaska, supra. On this basis, assuming only the facts you have given us to be relevant to the determination of the matter, it is our opinion that The Billings County Pioneer would qualify as a newspaper published in Billings County within the meaning of the above-quoted statutory provision. On the basis of your statement that The Belfield News is located at Belfield, North Dakota, is printed, published and edited in Stark County and mailed from Belfield, North Dakota, it is our opinion same would not fall within this definition of the word "publish", and therefore, that it does not qualify as a candidate for official newspaper. It is, perhaps, arguable that in the broadest sense of the word, this newspaper is actually published in Billings County, insofar as it is generally circulated in that county, however, it would appear that the majority of decisions recognizing a distinction between publishing and printing, nevertheless, limit the meaning of the word "published" to the place from where it is first made known to the public. Considering even its name, we believe it obvious that the Belfield News is in the first instance primarily a newspaper, serving the city of Belfield and circulated from such municipality, regardless of the fact that it may be largely concerned with Billings County affairs.

LESLIE R. BURGUM

Attorney General